

ASSEMBLY BILL

No. 7

Introduced by Assembly Member Wieckowski

December 3, 2012

An act to amend Section 3213 of, and to add Article 3 (commencing with Section 3150) to Chapter 1 of Division 3 of, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 7, as introduced, Wieckowski. Oil and gas: hydraulic fracturing.

Under existing law, the Division of Oil, Gas, and Geothermal Resources (DOGGR) in the Department of Conservation regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. The State Oil and Gas Supervisor supervises the drilling, operation, maintenance, and abandonment of wells and the operation, maintenance, and removal or abandonment of tanks and facilities related to oil and gas production within an oil and gas field regarding safety and environmental damage. Existing law requires an operator of a well, before commencing the work of drilling the well, to obtain approval from the State Oil and Gas Supervisor or a district deputy. Existing law requires the operator of a well to keep, or cause to be kept, a careful and accurate log, core record, and history of the drilling of the well. Within 60 days after the date of cessation of drilling, rework, or abandonment operations, the owner or operator is required to file with the district deputy certain information, including the history of work performed.

This bill would define, among other things, hydraulic fracturing and hydraulic fracturing fluid. The bill would require an operator of a well to record and include all data on hydraulic fracturing treatment,

including the risk posed by potential seismicity, as a part of the history of the drilling of the well. The bill would require DOGGR, in consultation with the Department of Toxic Substances Control, the State Air Resources Board, and the State Water Resources Control Board, on or before January 1, 2014, to adopt rules and regulations specific to hydraulic fracturing, including governing the construction of wells and well casings and full disclosure of the composition and disposition of hydraulic fracturing. The bill would require an operator to file with the supervisor or a district deputy, at least 30 days prior to the commencement of a hydraulic fracturing treatment, a notice of intention to commence hydraulic fracturing treatment containing specified information. The bill would require the hydraulic fracturing to be completed within one year of the filing of the notice of intention. The bill would require DOGGR, within 10 days of the receipt of the notice of intention, to make the notice publicly available, to post it on the division's Internet Web site, and to notify the appropriate regional water quality control board. The bill would require the supplier, as defined, of the hydraulic fracturing treatment to provide to the operator, within 30 days following the conclusion of the hydraulic fracturing, certain information regarding the hydraulic fracturing fluid. The bill would require the operator, within 60 days of the cessation of hydraulic fracturing treatment, to post or cause to have posted on an Internet Web site accessible to the public specified information on the fracturing and fluid, as specified. The bill would require a supplier claiming trade secret protection for the chemical composition of additives used in the hydraulic treatment to disclose the composition to DOGGR, but would, except as specified, prohibit those with access to the trade secret to disclose it, and a person who violates this prohibition would be guilty of a misdemeanor. Because this bill would create a new crime, it would impose a state-mandated local program.

This bill would require the supervisor, on or before January 1, 2016, and annually thereafter, to transmit to the Legislature and make available publicly a comprehensive report on hydraulic fracturing in the exploration and production of oil and gas resources in the state.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 3 (commencing with Section 3150) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 3. Hydraulic Fracturing

3150. "Additive" means a substance or combination of substances added to a base fluid for purposes of preparing a hydraulic fracturing fluid. An additive may, but is not required to, serve additional purposes beyond the transmission of hydraulic pressure to the geologic formation. An additive may be of any phase and includes proppants.

3151. "Base fluid" means the continuous phase fluid used in the makeup of a hydraulic fracturing fluid. The continuous phase fluid may include, but is not limited to, water, and may be a liquid or a gas.

3152. "Carrier fluid" means a base fluid into which additives are mixed to form a hydraulic fracturing fluid.

3153. "Hydraulic fracturing" means a treatment used in stimulating a well that involves the pressurized injection of hydraulic fracturing fluid and proppants into an underground geologic formation in order to fracture the formation, thereby causing or enhancing, for the purposes of this division, the production of oil or gas from a well.

3154. "Hydraulic fracturing fluid" means a carrier fluid mixed with physical and chemical additives for the purpose of hydraulic fracturing. A hydraulic fracturing treatment may include more than one hydraulic fracturing fluid.

3155. "Proppants" means materials inserted or injected into the underground geologic formation that are intended to prevent fractures from closing.

3156. "Supplier" means an entity performing hydraulic fracturing or an entity supplying an additive or proppant directly to the operator for use in hydraulic fracturing.

1 3157. (a) The Legislature finds and declares that hydraulic
2 fracturing of oil and gas wells in combination with technological
3 advances in oil and gas well drilling are spurring oil and gas
4 extraction, as well as oil and gas exploration, in California.

5 (b) (1) On or before January 1, 2014, the division, in
6 consultation with the Department of Toxic Substances Control,
7 the State Air Resources Board, and the State Water Resources
8 Control Board, shall adopt rules and regulations specific to
9 hydraulic fracturing. The rules and regulations shall include, but
10 are not limited to, revisions, as needed, to the rules and regulations
11 governing construction of wells and well casings to ensure integrity
12 of wells, well casings, and the geologic and hydrologic isolation
13 of the oil and gas formation during and following hydraulic
14 fracturing, and full disclosure of the composition and disposition
15 of hydraulic fracturing fluids.

16 (2) Full disclosure of the composition and disposition of
17 hydraulic fracturing fluids shall, at a minimum, include:

18 (A) The date of the hydraulic fracturing.

19 (B) A complete list of the names, Chemical Abstract Service
20 (CAS) numbers, and maximum concentration, in percent by mass,
21 of each and every chemical constituent of the hydraulic fracturing
22 fluids used. If a CAS number does not exist for a chemical
23 constituent, the well owner or operator may provide another unique
24 identifier, if available. Chemical information claimed as a trade
25 secret, pursuant to subdivision (h), shall be identified as such and
26 reported as described in subdivision (h).

27 (C) The trade name, the supplier, and a brief description of the
28 intended purpose of each additive contained in the hydraulic
29 fracturing fluid.

30 (D) The total volume of carrier fluid used during hydraulic
31 fracturing, and the identification of whether the carrier fluid is
32 water suitable for irrigation or domestic purposes, water not
33 suitable for irrigation or domestic purposes, or a fluid other than
34 water.

35 (E) The total volume of base fluid, if not reported as a carrier
36 fluid, used during hydraulic fracturing, and the identification of
37 whether the base fluid is water suitable for irrigation or domestic
38 purposes, water not suitable for irrigation or domestic purposes,
39 or a fluid other than water.

1 (F) The source, volume, and disposition of all water, including,
2 but not limited to, all water used as base and carrier fluids, used
3 during hydraulic fracturing and recovered from the well following
4 hydraulic fracturing that is not otherwise reported as produced
5 water pursuant to Section 3227.

6 (G) The disposition of all hydraulic fracturing fluids other than
7 water.

8 (H) Any radiological components or tracers injected into the
9 well as part of the hydraulic fracturing process, a description of
10 the recovery method, if any, for those components or tracers, the
11 amount recovered, if any, and the disposal method for recovered
12 components or tracers.

13 (I) The radioactivity of the recovered hydraulic fracturing fluids.

14 (J) The location of the portion of the well subject to the hydraulic
15 fracturing treatment and the extent of the fracturing surrounding
16 the well induced by the treatment using the methodology
17 determined by the division.

18 (c) (1) Notwithstanding any other law or regulation, at least 30
19 days prior to commencing a hydraulic fracturing treatment on a
20 well, the operator shall file a written notice of intention to
21 commence the hydraulic fracturing treatment with the supervisor
22 or district deputy. The notice shall contain the pertinent data the
23 supervisor requires on printed forms supplied by the division or
24 on other forms acceptable to the supervisor. The hydraulic
25 fracturing treatment shall be completed within one year of filing
26 the notice of intention. The information provided in the notice
27 shall include, but is not limited to, the following:

28 (A) The well identification number and location.

29 (B) The time period during which the hydraulic fracturing
30 treatment is planned to occur.

31 (2) Within 10 days of receipt of the notice of intention, the
32 division shall make the notice of intention publicly available, post
33 it on the publicly accessible portion of the division's Internet Web
34 site, and notify the appropriate regional water quality control board
35 or boards as determined by where the well, including its subsurface
36 portion, is located.

37 (3) The operator shall provide notice to the division 72 hours
38 prior to the actual start of the hydraulic fracturing treatment in
39 order for the division to witness the treatment.

(d) If hydraulic fracturing is performed on a well, a supplier that performs any part of hydraulic fracturing or provides additives directly to the operator for hydraulic fracturing shall furnish the operator with information needed for the operator to comply with subdivision (e). If a supplier claims trade secret protection pursuant to subdivision (h), the supplier shall notify the operator and provide to the operator substitute information, as described in subdivision (h), suitable for public disclosure. This information shall be accurate and shall be provided as soon as possible but no later than 30 days following the conclusion of the hydraulic fracturing.

(e) (1) Within 60 days following cessation of hydraulic fracturing on a well, the operator shall post or cause to have posted to an Internet Web site designated or maintained by the division and accessible to the public, all of the hydraulic fracturing fluid composition and disposition information required to be collected pursuant to rules and regulations adopted under subdivision (b), including well identification number and location.

(2) The division may designate a publicly accessible Internet Web site, developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission for the posting of the data pursuant to paragraph (1), if all of the following requirements are met by January 1, 2015:

(A) The information is organized on that Internet Web site in a format such as a spreadsheet that allows the public to easily search and aggregate, to the extent practicable, each type of information required to be collected pursuant to subdivision (b) using search functions on that Internet Web site.

(B) The Internet Web site permits any person to export, copy, or otherwise obtain in electronic format the data submitted pursuant to subdivision (b) from that Internet Web site. Once obtained, there shall be no restrictions on the possession or further distribution, modification, transmission, or reproduction of any information submitted pursuant to this section in any form and by any means and no prior authorization shall be required.

(3) If an Internet Web site is not designated by the division pursuant to paragraph (2), the division shall maintain a publicly accessible Internet Web site, in compliance with subparagraphs (A) and (B) of paragraph (2), for the posting of the data required pursuant to paragraph (1).

(f) The operator is responsible for compliance with this section.

1 (g) In developing regulations for hydraulic fracturing pursuant
2 to subdivision (b), the supervisor shall take into consideration and
3 document the risk posed by potential seismicity.

4 (h) (1) The supplier may claim trade secret protection for the
5 chemical composition of additives pursuant to Section 1060 of the
6 Evidence Code, or the Uniform Trade Secrets Act (Title 5
7 (commencing with Section 3426) of Part 1 of Division 4 of the
8 Civil Code).

9 (2) If a supplier believes that information regarding a chemical
10 constituent of a hydraulic fracturing fluid is a trade secret, the
11 supplier shall nevertheless disclose the information to the division
12 within 30 days following cessation of hydraulic fracturing on a
13 well, and shall notify the division in writing of that belief.

14 (3) The supplier is not required to disclose trade secret
15 information to the operator.

16 (4) This subdivision does not permit a supplier to refuse to
17 disclose the information required pursuant to this section to the
18 division.

19 (5) To comply with the public disclosure requirements of this
20 section, the supplier shall indicate where trade secret information
21 has been withheld and the specific name of a chemical constituent
22 shall be replaced with the chemical family name or similar
23 descriptor associated with the trade secret chemical information.

24 (6) (A) Except as provided in subparagraph (B) of paragraph
25 (8), the division shall protect from disclosure any trade secret
26 designated as such by the supplier, if that trade secret is not a public
27 record.

28 (B) Except as provided in subparagraph (B) of paragraph (8),
29 information claimed as trade secret is not a public record for
30 purposes of Chapter 9.6 (commencing with Section 3250) of
31 Division 4 of Title 1 of the Government Code.

32 (7) The supplier shall notify the division in writing within 30
33 days of any changes to information provided to the division to
34 support a trade secret claim.

35 (8) Upon receipt of a request for the release of information to
36 the public, which includes information the supplier has notified
37 the division is a trade secret and is not a public record, the
38 following procedure applies:

39 (A) The division shall notify the supplier of the request in
40 writing by certified mail, return receipt requested.

(B) The division shall release the information to the public, but not earlier than 60 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 60-day period, the supplier obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection or for a preliminary injunction prohibiting disclosure of the information to the public and provides notice to the division of that action.

(9) Except as provided in subparagraph (B) of paragraph (8), trade secret information is not a public record and shall not be disclosed to anyone except to an officer or employee of the division, the state, or the United States, in connection with the official duties of that officer or employee, to a health professional, under any law for the protection of health, or to contractors with the division or the state and its employees if, in the opinion of the division, disclosure is necessary and required for the satisfactory performance of a contract, for performance of work, or to protect health and safety.

(10) Except as provided in subparagraph (B) of paragraph (8), an officer or employee of the division or former officer or employee who, by virtue of that employment or official position, has possession of, or has access to, any trade secret subject to this section, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor. A contractor of the division and any employee of the contractor who has been furnished information as authorized by this section shall be considered an employee of the division for purposes of this section.

(11) In the event of exposure to hydraulic fracturing fluids necessitating medical care, the person receiving the care shall have the right to petition the division to disclose relevant trade secret information in order to receive appropriate medical care.

(i) This section does not apply to routine tests to monitor the integrity of wells and well casings.

(j) A well granted confidential status pursuant to Section 3234 shall not be required to comply with the public disclosure of hydraulic fracturing fluids pursuant to subdivision (e) until the confidential status of the well ceases.

1 (k) (1) Whenever it appears that any person is violating or
2 threatening to violate any provision of this section, the supervisor
3 may bring suit against the person in the superior court of any
4 county where the violation occurs or is threatened, to restrain the
5 person from continuing the violation or from carrying out the threat
6 of violation. Upon the filing of the suit, summons issued to the
7 person may be directed to the sheriff or his or her deputies. In the
8 suit, the court has jurisdiction to grant to the supervisor any final
9 prohibitory and mandatory injunctions that the facts warrant.

10 (2) If the supervisor fails to bring suit to enjoin a violation or
11 threatened violation of any provision of this section, or any rule,
12 regulation, or order of the supervisor within 30 days after receipt
13 of written request to do so by any person who is or will be
14 adversely affected by the violation, the person making the request
15 may bring suit in the person's own behalf to restrain the violation
16 or threatened violation in any court in which the supervisor might
17 have brought suit. If in the suit, the court holds that injunctive
18 relief should be granted, the supervisor shall be made a party and
19 shall be substituted for the person who brought the suit, and the
20 injunction shall be issued as if the supervisor had at all times been
21 the plaintiff.

22 (3) A civil action for damages shall not lie against any person
23 for the violation of this section or any rule, regulation, or order of
24 the supervisor issued to implement or enforce this section. If the
25 supervisor brings a suit or action pursuant to paragraph (1), a
26 defendant or intervenor shall not cross-complain or otherwise bring
27 an action in the same proceeding against any other person for
28 damages or for any other purpose.

29 3158. (a) Within 60 days after the date of cessation of
30 hydraulic fracturing, the owner or operator shall file with the
31 district deputy, in a form approved by the supervisor, true copies
32 of the log, core record, and history of work performed, and, if
33 made, true and reproducible copies of all electrical, physical, or
34 chemical logs, tests, or surveys. Upon a showing of hardship, the
35 supervisor may extend the time within which to comply with this
36 section for a period not to exceed 60 additional days.

37 (b) The supervisor shall include information provided pursuant
38 to subdivision (e) of Section 3157 on existing publicly accessible
39 maps on the division's Internet Web site, and make the information
40 available such that hydraulic fracturing and related information

1 are associated with each specific well. If data are reported on an
2 Internet Web site not maintained by the division pursuant to
3 paragraph (2) of subdivision (e) of Section 3157, the division shall
4 provide electronic links to that Internet Web site. The public shall
5 be able to search and sort the hydraulic fracturing and related
6 information by at least the following criteria:

7 (1) Geographic area.

8 (2) Additive.

9 (3) Chemical constituent.

10 (4) Chemical Abstract Service number.

11 (5) Time period.

12 (6) Operator.

13 (c) On or before January 1, 2016, and annually thereafter, the
14 supervisor shall prepare and transmit to the Legislature a
15 comprehensive report on hydraulic fracturing in the exploration
16 and production of oil and gas resources in California. The report
17 shall include aggregated data of all of the information required to
18 be reported pursuant to Section 3157 reported by district, county,
19 and operator. The report also shall include relevant additional
20 information, as necessary, including, but not limited to, all the
21 following:

22 (1) Aggregated data detailing the disposition of any produced
23 water from wells that have undergone hydraulic fracturing.

24 (2) Aggregated data detailing the names and locations of seismic
25 faults within a distance from the well bore in any direction equal
26 to five times the fracture zone length and the names and locations
27 of seismic faults whose movement is reasonably anticipated to
28 impact the integrity of the well, well casing, and oil and gas
29 formation.

30 (3) The number of emergency responses to a spill or release.

31 (4) Aggregated data detailing the number of times trade secret
32 information was not provided to the public, by county and by each
33 company, in the preceding year.

34 (5) Data detailing the loss of well and well casing integrity in
35 the preceding year for wells that have undergone hydraulic
36 fracturing treatment. For comparative purposes, data detailing the
37 loss of well and well casing integrity in the preceding year for all
38 wells shall also be provided. The cause of each well and well casing
39 failure, if known, shall also be provided.

1 (d) The report shall be made publicly available and an electronic
2 version shall be available on the division's Internet Web site.

3 (e) (1) The requirement for submitting a report imposed under
4 subdivision (c) is inoperative on January 1, 2020, pursuant to
5 Section 10231.5 of the Government Code.

6 (2) A report to be submitted pursuant to subdivision (c) shall
7 be submitted in compliance with Section 9795 of the Government
8 Code.

9 SEC. 2. Section 3213 of the Public Resources Code is amended
10 to read:

11 3213. The history shall show the location and amount of
12 sidetracked casings, tools, or other material, the depth and quantity
13 of cement in cement plugs, the shots of dynamite or other
14 explosives, and the results of production and other tests during
15 drilling operations. *All data on hydraulic fracturing treatments*
16 *pursuant to Section 3157 shall be recorded in the history.*

17 SEC. 3. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.